

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

THOMAS M. JAMES

Plaintiff,

v.

DOCTOR ELI LORENZO and
DOCTOR NICOLAS P. VILLANUSTRE

Defendants.

Case No.: 1:13-cv-541-WTL-TAB

**DEFENDANT DOCTOR NICOLAS P. VILLANUSTRE'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S SECOND AMENDED CIVIL RIGHTS COMPLAINT**

Defendant Doctor Nicolas P. Villanustre ("Defendant"), by counsel, responds to the Second Amended Civil Rights Complaint ("Complaint") filed by Plaintiff Thomas M. James ("Plaintiff") and in support thereof state as follows:

ADMISSIONS & DENIALS

I. PARTIES

1. Defendant admits the material allegations contained in Paragraph 1 of this section of Plaintiff's Complaint.
2. Defendant denies the material allegations against him contained in this section of Plaintiff's Complaint and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of this section of Plaintiff's Complaint.

II. JURISDICTION

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this section of Plaintiff's Complaint.

III. BASIS FOR CLAIMS

Defendant denies the material allegations contained in this section of Plaintiff's Complaint.

IV. CLAIMS

1. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of this section of Plaintiff's Complaint.
2. Defendant denies the material allegations against him contained in Paragraph 2 of this section of Plaintiff's Complaint and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of this section of Plaintiff's Complaint.
3. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of this section of Plaintiff's Complaint.

Claim I

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in **Claim I** of this section of Plaintiff's Complaint.

Claim II

Defendant admits that Plaintiff was brought to Wishard Hospital but denies the material allegations against him contained in Paragraph 8 of **Claim II**. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in **Claim II** of this section of Plaintiff's Complaint.

Claim III

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in **Claim III** of this section of Plaintiff's Complaint.

V. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this section of Plaintiff's Complaint.

VI. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this section of Plaintiff's Complaint.

VII. REQUEST FOR RELIEF

Defendant denies the material allegations contained in this section of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Defendant has undertaken, in good faith, to list all of the special or additional defenses that it may have with respect to the causes of action or claims presented in Plaintiff's Complaint. Defendant specifically reserves the right, however, to amend, supplement, restate or withdraw any of his special or additional defenses, or assert additional defenses based upon the following: (i) Plaintiff's failure to sufficiently particularize its causes of action or claims; and/or (ii) Defendant's continuing analysis and investigation of the underlying matter, as well as the allegations stated in Plaintiff's Complaint. Further, by characterizing the following as defenses, Defendant does not necessarily admit that he bears the burden of proof on any of the issues raised by the following defenses.

Subject to, and without waiving any of the foregoing, Defendant identifies the following additional defenses upon which they may rely at the time of trial:

Affirmative Defense I

Plaintiff's claims are barred under the Doctrine of *Res Judicata* in that Plaintiff's claims have already been litigated in State Court.

Affirmative Defense II

Subject to further discovery, Plaintiff may have been negligent in his own care.

Affirmative Defense III

Plaintiff fails to state a claim under the 8th Amendment for deliberate indifference.

WHEREFORE, Defendant Doctor Nicolas P. Villanustre requests that the Court enter judgment in favor of Defendant and against Plaintiff, and provide for all other appropriate relief.

Respectfully Submitted,

/s/Gerald B. Coleman
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Attorney for Doctor Nicolas P. Villanustre

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Defendant Doctor Nicolas P. Villanustre's Answer and Affirmative Defenses to Plaintiff's Second Amended Civil Rights Complaint has been served upon the following by First Class, U.S. Mail, postage pre-paid, this 24th day of December, 2013.

Thomas M. James #98106
Arizona State Prison
ASPC-Douglas
Moshau North
Post Office Box 5002
Douglas, Arizona 85608

Respectfully Submitted,

/s/Gerald B. Coleman
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